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FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 500)

Complete if Known

Application Number	10/786,525
Filing Date	February 14, 2004
First Named Inventor	Allen R. Jones
Examiner Name	Aaron J. Lewis
Art Unit	3743
Attorney Docket No.	1-25083

METHOD OF PAYMENT (check all that apply)

Check Credit card Money Order Other None
 Deposit Account:

Deposit Account Number 13-0005
 Deposit Account Name MacMillan, Sobanski & Todd, LLC

The Commissioner is authorized to: (check all that apply)
 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee	Fee Code (\$)	Small Entity Fee	Fee Description	Fee Paid
1001 1000	2001 500		Utility filing fee	
1002 430	2002 215		Design filing fee	
1003 660	2003 330		Plant filing fee	
1004 1000	2004 500		Reissue filing fee	
1005 200	2005 100		Provisional filing fee	
SUBTOTAL(I) (\$)				500

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	-20** =	X	
Claims	- 3** =	X	
Multiple Dependent			

Large Entity Fee	Small Entity Fee	Fee Description
Code (\$)	Code (\$)	
1202 50	2202 25	Claims in excess of 20
1201 200	2201 100	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 200	2204 100	** Reissue independent claims over original patent
1205 50	2205 25	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		

** or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 120	2251 60	Extension for reply within first month	
1252 450	2252 225	Extension for reply within second month	
1253 1020	2253 510	Extension for reply within third month	
1254 1,590	2254 795	Extension for reply within fourth month	
1255 2,160	2255 1,080	Extension for reply within fifth month	
1401 500	2401 250	Notice of Appeal	
1402 500	2402 250	Filing a brief in support of an appeal	500
1403 1000	2403 500	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 500	2452 250	Petition to revive - unavoidable	
1453 1500	2453 750	Petition to revive - unintentional	
1501 1400	2501 700	Utility issue fee (or reissue)	
1502 800	2502 400	Design issue fee	
1503 1100	2503 550	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 500

(Complete if applicable)

Name (Print/Type)	Oliver E. Todd, Jr.	Registration No. (Attorney/Agent)	24,746	Telephone	419-255-5900
Signature	<i>Oliver E. Todd, Jr.</i>			Date	July 14, 2006

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This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:
Allan R. Jones, Jr. et al.

Serial No. 10/786,525

Filed: February 25, 2004

Confirmation No. 2726

For: Method For Securing A Nasal
Mask

}
Examiner Aaron J. Lewis

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Group Art Unit 3743

}
Attorney Docket 1-25083

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Honorable Sir:

This brief is in furtherance of a Notice of Appeal, filed on April 18, 2006. Please charge the fees required under 37 C.F.R. §41.20(b)(2) and the fees for any required petition for extension of time for filing this brief, and any other necessary fees to MacMillan, Sobanski & Todd, LLC, Deposit Account No. 13-0005.

Appellants request that for the reasons set forth below, the Board of Patent Appeals and Interferences reverse the Examiner as to all rejections.

No oral hearing is requested.

Respectfully submitted,

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By Oliver E. Todd
Oliver E. Todd, Jr.
Reg. No. 24,746

Date: July 14, 2006
MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, 5th Floor
720 Water Street
Toledo, Ohio 43604
(419) 255-5900

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over Genger (EP 0 958 841 A2) in view of Gradon et al.
(6,615,834) and Brostrom et al (6,457,473) is in error.

1. Independent Claim 13 Is Patentable
2. Independent Claim 14 And Dependent Claims 15-18
Are Independently Patentable
3. Independent Claim 19 And Dependent Claims 20 and
21 Are Independently Patentable

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I. Real Party In Interest

The real party in interest is Sunrise Medical HHG Inc., the assignee of record.

II. Related Appeals And Interferences

There are no related appeals or interferences known to Appellants, the Appellants' representatives, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status Of Claims

Claims 13-21 are currently pending in the application. Claims 1-12 have been cancelled. This is an appeal from the Examiner's final rejection of claims 13-21.

IV. Status Of Amendments

No amendments have been filed after the final rejection.

V. Summary Of Claimed Subject Matter

A. The invention is for a method for securing and for temporarily removing a nasal mask from a user's head using a brow bar secured to the user's forehead with an upper strap which includes a lower strap which extends continuously around the user's head.

As claimed in claim 13, one embodiment of the invention is directed towards a method for securing and for temporarily removing a nasal mask 10 from a user's head. The method is illustrated in Figs. 18 and 19, and is described on lines 1-12 of paragraph [0062] on page 14 of the specification, as well as on lines 4-19 of paragraph [0010] on pages 3 and 4 of the specification. The nasal mask 10 is secured to the user's head with an upper strap 109 which is attached to a brow bar 21 and a lower strap 112 which extends continuously around the user's head. The upper and lower straps 11 and 112 remain on the user's head while the mask 10 is temporarily removed.

The claimed method involves a) providing the nasal mask 10 with an upper portion (shown as a bridge 22) which is releasably connected to the brow bar 21 which is secured to the user's forehead with the upper strap 109; b) releasably attaching a lower portion of the mask 10 to the user's head with an elastic lower strap 112 which extends continuously around the user's head by positioning the lower strap 112 in a recess 38 (more clearly shown in Fig. 5 and described on lines 1-5 of paragraph [0052] on page 9) in the lower portion of the mask; and c) temporarily removing the mask by removing the lower strap 112 from the recess 38 and disconnecting the upper portion 22 from the brow bar 21 while leaving the brow bar secured to the user's forehead.

The claimed method provides an advantage over the prior art in that the mask can be temporarily removed without removing the headgear from the patient and without the need to disconnect ends of a lower strap from the mask, which leaves the lower strap ends hanging and difficult to later reconnect to the mask.

B. The invention is for a method for securing a nasal mask having an upper portion and a lower portion to a user's head in which a brow bar is attached to headgear, the headgear is attached to the user's head prior to securing the mask to the brow bar and headgear, and in which the headgear has an elastic lower strap which extends continuously around the user's head for attachment to the lower portion of the mask.

As claimed in claim 14, a second embodiment of the invention is directed towards a method for securing a nasal mask 10 to a user's head. The method is illustrated in Figs. 18 and 19, and is described on lines 1-12 of paragraph [0062] on page 14 of the specification, as well as on lines 4-19 of paragraph [0010] on pages 3 and 4 of the specification. The claimed method involves a) attaching a brow bar 21 to headgear 108; b) attaching the headgear 108 to a user's head with the brow bar 21 positioned on the users forehead, with an upper strap 109 of the headgear 108

extending from the brow bar around the user's head and with an elastic lower strap 112 extending continuously around the user's head; c) attaching an upper portion 22 of the nasal mask 10 to the brow bar 21; and d) attaching the lower strap 112 to a lower portion of the nasal mask 10.

C. The invention is for a method for securing a nasal mask to a user's head using headgear having a resilient upper strap secured to a brow bar which is releasably connected to an upper portion of the mask and having a resilient lower strap forming a continuous loop which is positioned to extend over a lower portion of the mask.

As claimed in claim 19, a second embodiment of the invention is directed towards a method for securing a nasal mask 10 to a user's head. The method is illustrated in Figs. 18 and 19, and is described on lines 1-12 of paragraph [0062] on page 14 of the specification, as well as on lines 4-19 of paragraph [0010] on pages 3 and 4 of the specification. The claimed method involves the steps of a) providing headgear 108 having an upper resilient strap 109 secured to a brow bar 21 and having a resilient lower strap 112 which forms a continuous loop; b) positioning the headgear 108 on a user's head so that the brow bar 21 is held by the upper resilient strap 109 against the user's forehead and the lower resilient strap 112 extends around the patient's head below the patient's nose (Fig. 19); c) releasably connecting an upper portion 22 of the mask 10 to the brow bar 21; and d) positioning the resilient lower strap 112 to extend over a lower portion of the mask 10 to hold the lower portion against the user's head (Fig. 18).

VI. Grounds Of Rejection To Be Reviewed On Appeal

1. Whether claim 13-21 are unpatentable 35 U.S.C. §103(a) over Genger (EP 0 958 841 A2) in view of Gradon et al. (6,615,834) and Brostrom et al (6,457,473).

VII. Arguments Of Patentability

A. The rejection of claims 13-21 under 35 U.S.C. §103(a) over Genger (EP 0 958 841 A2) in view of Gradon et al. (6,615,834) and Brostrom et al (6,457,473) is in error.

1. Independent Claim 13 Is Patentable

Genger et al. shows a nasal mask 24 which is secured to a user's head with headgear having a continuous upper strap 42 and two lower straps 44 which are designed to extend around opposite sides of the user's head. A bracket 48 is positioned on the upper strap 42. An upper portion 34 of the mask 24 is inserted between the bracket 48 to secure the upper portion 34 to the user's forehead. Elastic bands 56, 58 are secured to the free ends of the two lower straps 44. The lower portion of the mask 24 is secured to the user's head by attaching the elastic bands 56, 58 to knobs 32 on opposite sides of the mask. When the elastic bands 56, 58 are detached from the mask, they do not extend continuously around the user's head.

Gradon et al. shows a nasal mask having an upper portion secured to a user's head by an upper headgear strap secured to a forehead rest 106. There is no detailed information as to how the headgear 108 is secured to the forehead rest 106. The headgear has a lower strap on each side of the user's head. Each of the lower straps extends only partially around the user's head and terminates at a clip 122, 124 (column 4, lines 3-10). A loop 120 extends through guides 126, 128 (Fig. 5) on the mask body 102. The mask body 102 is secured to the user's face by inserting the loop 120 into the headgear clips 122, 124. The loop 120 is made from a low friction material which allows movement between the loop 120 and the mask body 102 to help keep the mask sealed against the user's face. Although there is no detailed description in Gradon et al., it appears that the loop 120 must be detached from the clips 122, 124 in order to

remove the mask from the user. Consequently, when the mask is removed, there is no continuous lower strap extending around the user's head.

The office action also refers to the embodiment shown in Fig. 7 of Brostrom et al. and briefly described at column 6, lines 17-35. Brostrom et al. refers to the strap 60 as being "continuous". However, it is not continuous in that it has two free ends attached to hooks 62 for securing to a support crown 50. The strap 60 extend through a mask carriage (not labeled in Fig. 7, but identified by reference 26 in other drawings) and form a lower loop which extends around a user's neck. It appears that when the hooks 62 are detached from the support crown 50, the strap 60 slides in the carriage to increase the size of the lower loop so that the mask may hang from the user's neck. In column 1, line 67 through column 2, line 4, Brostrom et al. states "The mask body is able to be retained at a first position covering the nose and mouth of the wearer and at a second position dropped down from the face of the wearer without moving the harness assembly from the head of the wearer. The lower loop shown in Fig. 7 always remains secured to the mask carriage. It is not designed for removing the mask and carriage from the user while the lower loop remains secured around the user's head, as required in claim 13.

It is submitted that the cited art does not teach the method of claim 13. Specifically, the cited art does not teach the claimed step of "b) releasably attaching said lower portion of said nasal mask to the user's head with a lower strap wherein said lower portion of said nasal mask is releasably attached to the user's head by positioning an elastic lower strap which extends continuously around the user's head in a recess in said lower portion of said mask", and the cited art does not teach the step of "c) temporarily removing said mask by removing said lower strap from said nasal mask recess". None of the cited references disclose a continuous lower strap which engages a recess on the mask when the mask is secured to the user, and extends

continuously around the user's head while removed from the mask recess while the mask is temporarily removed from the user. Genger et al. has two strap ends which are independently secured to the mask body and which do not extend around the user's head when the mask is removed. Gradon et al. also has two strap ends which are independently secured to a loop 120 when the mask is secured to the user and which are detached and hang free when the mask is detached. Fig. 7 of Brostrom et al. which was relied on in the rejection has a lower loop which extends around the user's neck for allowing the mask to hang from the neck when detached from the face. However, this loop does not fit into a recess and is not removed from a recess on the mask.

Accordingly, the rejection is in error and should be reversed.

2. Independent Claim 14 And Dependant Claims 15-18 Are Patentable

Attention is directed to the above discussion of the three references with respect to claim 13. Claims 14-18 are all directed to a method for securing a nasal mask having an upper portion and a lower portion to a user's head. The method requires the sequential steps of a) attaching a brow bar to headgear, b) attaching the headgear to a user's head with the brow bar positioned on the user's head, the headgear having an upper strap which extends from the brow bar around the user's head and having an elastic lower strap which extends continuously around the user's head, c) attaching the upper portion of the nasal mask to the brow bar, and d) attaching the lower strap to the lower portion of the mask. None of the cited references disclose the step of attaching headgear to a user in which the headgear includes a lower strap which extends continuously around the user's head prior to attaching the mask to the headgear. Nor do the cited references disclose the step of subsequently, attaching the upper portion of the mask to the headgear while it is on the user and then attaching a lower strap which was previously positioned to extend continuously around the user's

head to the mask. Without a disclosure of these steps in the cited art, the rejection of claims 14-15 is in error and should be reversed.

3. Independent Claim 19 And Dependent Claims 20 And 21 Are Patentable

Attention is directed to the above discussion of the three references with respect to claim 13. Claims 19-21 are directed to a method for securing a nasal mask having an upper portion and a lower portion. The method requires the sequential steps of a) providing headgear having an upper resilient strap secured to a brow bar and having a lower resilient strap which forms a continuous loop, b) positioning the headgear on a user's head so that the brow bar is held by the upper resilient strap against the user's forehead and the lower resilient strap extends around the patient's head below the patient's nose. c) releasably connecting the upper portion of the nasal mask to the brow bar, and d) positioning the resilient lower strap to extend over the lower portion of the nasal mask to hold the lower portion against the user's head. None of the cited references disclose initially providing a headgear which has both a brow bar attached to a resilient upper strap and a lower strap which is continuous prior to attaching the headgear to the user and prior to attaching the mask to the headgear. Nor do the references disclose the step of attaching headgear to a user in which the headgear includes the lower strap which extends continuously around the user's head prior to attaching the mask to the headgear. Further, the cited references do not disclose the steps of subsequently, attaching the upper portion of the mask to the headgear while it is on the user and then positioning a lower strap which was previously positioned to extend continuously around the user's head hold the lower portion of the mask. Without a disclosure of these steps in the cited art, the rejection of claims 19-21 is in error and should be reversed.

For the above reasons, it is respectfully submitted that the Examiner's final refusal to allow claims was incorrect. Accordingly, it is requested that the Examiner's final rejection be reversed.

VIII. Claims Appendix

13. A method for securing and for temporarily removing a nasal mask from a user's head comprising the steps of:

- a) providing said nasal mask with an upper portion releasably connected to a brow bar which is secured to the user's forehead with an upper strap;
- b) releasably attaching said lower portion of said nasal mask to the user's head with a lower strap wherein said lower portion of said nasal mask is releasably attached to the user's head by positioning an elastic lower strap which extends continuously around the user's head in a recess in said lower portion of said mask; and
- c) temporarily removing said mask by removing said lower strap from said nasal mask recess and disconnecting said upper portion of said mask from said brow bar while leaving said brow bar secured to the user's forehead.

14. A method for securing to a user's head a nasal mask having an upper portion and a lower portion comprising the steps of:

- a) attaching a brow bar to headgear;
- b) attaching said headgear to a user's head with said brow bar positioned on the users forehead, said headgear having an upper strap which extends from said brow bar around the user's head and having an elastic lower strap which extends continuously around the user's head;
- c) attaching said upper portion of said nasal mask to said brow bar; and
- d) attaching said lower strap to said lower portion of said nasal mask.

15. (original) A method for securing a nasal mask to a user's head, as set forth in claim 14, and wherein said upper portion of said nasal mask is attached to said brow bar prior to attaching said headgear to the user's head.

16. A method for securing a nasal mask to a user's head, as set forth in claim 15, and wherein said lower strap is attached to said lower portion of said nasal mask by placing said lower strap in a recess in said lower portion of said nasal mask.

17. A method for securing a nasal mask to a user's head, as set forth in claim 14, and wherein said upper portion of said nasal mask is attached to said brow bar after attaching said headgear to the user's head.

18. A method for securing a nasal mask to a user's head, as set forth in claim 17, and wherein said lower strap is attached to said lower portion of said nasal mask by placing said lower strap in a recess in said lower portion of said nasal mask.

19. A method for securing a nasal mask having an upper portion and a lower portion to a user's head comprising the steps of:

- a) providing headgear having an upper resilient strap secured to a brow bar and having a lower resilient strap which forms a continuous loop;
- b) positioning the headgear on a user's head so that the brow bar is held by the upper resilient strap against the user's forehead and the lower resilient strap extends around the patient's head below the patient's nose;
- c) releasably connecting the upper portion of said nasal mask to said brow bar;
- d) positioning the resilient lower strap to extend over the lower portion of the nasal mask to hold the lower portion against the user's head.

20. A method for securing a nasal mask to a user's head, as set forth in claim 19, and wherein the upper portion of the nasal mask is connected to the brow bar to pivot relative to the brow bar, and further including the step of positioning the nasal mask to extend over the user's nose by pivoting the nasal mask relative to the connected brow

bar prior to positioning the resilient lower strap to extend over said lower portion of the nasal mask.

21. A method for securing a nasal mask to a user's head, as set forth in claim 20, and wherein the lower portion of said nasal mask includes a recess which is located between the user's nose and mouth when the mask is positioned to extend over the user's nose, and wherein the resilient lower strap is positioned in the recess.

IX. Evidence Appendix

None

X. Related Decisions Appendix

None